

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Standardized and Enhanced Disclosure	)	
Requirements for Television Broadcast Licensee	)	MM Docket No. 00-168
Public Interest Obligations	)	
	)	
Extension of the Filing Requirement	)	MM Docket No. 00-44
For Children's Television Programming	)	
Report (FCC Form 398)	)	

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**SECOND REPORT AND ORDER**

**Adopted: April 27, 2012**

**Released: April 27, 2012**

By the Commission: Chairman Genachowski and Commissioner Clyburn issuing separate statements;  
Commissioner McDowell approving in part, dissenting in part, and issuing a  
statement.

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## I. INTRODUCTION

1. In this *Second Report and Order* we modernize the procedures television broadcasters use to inform the public about how they are serving their communities, by having stations post their public files online in a central, Commission-hosted database, rather than maintaining the files locally at their main studios. This updating of our rules harnesses current technology to make information concerning broadcast service more accessible to the public and, over time, reduce broadcasters' costs of compliance.<sup>1</sup> This Order is another step in our modernization of the Commission's processes to transition from paper filings and recordkeeping to digital technology. Without imposing any new reporting obligation, it will help bring broadcast disclosure into the 21<sup>st</sup> Century.

2. Specifically, we adopt—with significant modifications—the proposal discussed in the *Further Notice of Proposed Rulemaking* (“*FNPRM*”) to replace the decades-old requirement that commercial and noncommercial television stations<sup>2</sup> maintain a public file at their main studios with a requirement to post most of the documents in that file to an online public file to be hosted by the Commission. We have departed from the proposal in a number of respects to maximize public benefits while avoiding compliance costs that the record suggests would not be justified at this time. First, because many stations' existing political files are large, and the retention period for the political file is shorter than for other portions of the public file, we will not require stations to incur the cost of upload their existing political files to the online public file. Rather, stations may upload documents in that portion of the public file only prospectively. Second, broadcasters will be responsible for uploading only those items now required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. In particular, the Commission will itself import to the online public file any document or information now required to be kept in the public file and that must already be filed with the Commission electronically in the Consolidated DataBase System (“*CDBS*”), so that stations do not need to post that information. Third, we do not adopt new disclosure obligations for sponsorship identifications and shared services agreements at this time, as had been proposed in the *FNPRM*. Rather, broadcasters will only be required to place in their online files material that is already required to be placed in their local files.<sup>3</sup> Fourth, we do not impose specific formatting requirements on broadcasters at this time, although stations should upload relevant documents either in their existing electronic format or in a simple, easily created electronic format such as .pdf. Finally, we will provide an organized file system for uploading documents so that the resulting public file for each station is orderly, and organizationally similar for all stations, thus promoting ease of use by stations and the public.

3. To better ensure that the Commission can accommodate television broadcasters' online filings and to limit any unforeseen start-up difficulties to those stations that are best able to address them, we will phase-in the new posting requirements. For the next two years we will only require stations that are affiliated with the top four national networks (ABC, NBC, CBS and Fox) and that are licensed to serve communities in the top 50 Designated Market Areas (“*DMAs*”)<sup>4</sup> to post political file documents

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<sup>1</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 26 FCC Rcd 15788, ¶ 1(2011) (“*FNPRM*”).

<sup>2</sup> All permittees and licensees of a “TV or Class A TV station” in the commercial and noncommercial educational broadcast services must maintain a public inspection file. See 73.3526(a)(2), 73.3527(a)(2).

<sup>3</sup> We use the term “local file” in this *Second Report and Order* to refer to the file maintained at the station's main studio under our current rules, and note that under those rules stations are permitted to make their public inspection files available electronically or in paper form. See 47 C.F.R. § 73.3526(b), 73.3527(b).

<sup>4</sup> A DMA is a geographic area defined by The Nielsen Company as a group of counties that make up a particular television market.

online.<sup>5</sup> We exempt all other stations from posting their political file documents to their online public file until July 1, 2014.<sup>6</sup> The Media Bureau will issue a Public Notice no later than July 1, 2013 to seek comment on the impact of this posting requirement, to enable us to consider whether any changes should be made before it takes effect for the other stations. We also defer considering whether to adopt online posting for radio licensees and multichannel video programming distributors until we have gained experience with online posting of public files of television broadcasters.

## II. BACKGROUND

4. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license.<sup>7</sup> Rather than dictating how broadcasters must meet that obligation, the Commission affords broadcasters broad latitude,<sup>8</sup> subject to a reporting requirement under which broadcasters must maintain a public inspection file that gives the public access to information about the station's operations.<sup>9</sup>

5. Almost seventy-five years ago – in 1938 – the Commission promulgated its first political file rule.<sup>10</sup> That initial rule was essentially identical to our current political file regulation in its requirements that the file be available for “public inspection” and include both candidate requests for time and the disposition of those requests, including the “charges made” for the broadcast time.<sup>11</sup> More than 45 years ago – in 1965 – the Commission additionally adopted a broader public inspection file rule.<sup>12</sup> The public file requirement grew out of Congress' 1960 amendment of Sections 309 and 311 of the Communications Act of 1934 (the “Act”), which allowed greater public participation in broadcast licensing.<sup>13</sup> Finding that Congress, in enacting these provisions, was guarding “the right of the general

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<sup>5</sup> The top 50 DMAs, for the purposes of this phase-in, are the DMAs ranked 1-50 by The Nielsen Company for 2011-2012. See Nielsen Local Television Market Universe Estimates, *available at* <http://www.nielsen.com/content/dam/corporate/us/en/public%20factsheets/tv/nielsen-2012-local-DMA-TV-penetration.pdf>.

<sup>6</sup> We will not exempt these stations from posting other public file documents online; the exemption applies only to the political file.

<sup>7</sup> *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1075, ¶ 32 (1984).

<sup>8</sup> *Id.* at ¶ 89.

<sup>9</sup> *Review of the Commission's Rules regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, ¶ 18 (1998), *recon. granted in part*, Memorandum Opinion and Order, 14 FCC Rcd 11113 (1999).

<sup>10</sup> See 3 Fed. Reg. 1691 (1938).

<sup>11</sup> *Id.*

<sup>12</sup> *Commission's Rules Relating to Inspection of Records*, Report and Order, 4 R.R.2d 1664 (1965); *recon. granted in part and denied in part*, Memorandum Opinion and Order, 6 R.R.2d 1527 (1965).

<sup>13</sup> 47 U.S.C. §§ 309 (Application for License) and 311 (Requirements as to Certain Applications in Broadcasting Service). See also *Commission's Rules Relating to Inspection of Records*, 4 R.R.2d at ¶ 9-10 (1965) (1960 amendment to Section 309 to allow any “party in interest” to participate in the licensing process applied to the general public and required the Commission to ensure that station “information is readily accessible, locally, to all who seek it”), *id.* (1960 amendment to Section 311(b) to authorize the Commission to hold hearings “at a place in, or in the vicinity of, the principal areas to be served by the station involved” required the availability of a local public file in order to “permit any interested person to participate in such hearings.”).

public to be informed, not merely the rights of those who have special interests,”<sup>14</sup> the Commission adopted the public inspection file requirement to “make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees.”<sup>15</sup>

6. In October 2000, in the first *Notice of Proposed Rulemaking* issued in this proceeding, the Commission concluded that “making information regarding how a television broadcast station serves the public interest easier to understand and more accessible will not only promote discussion between the licensee and its community, but will lessen the need for government involvement in ensuring that a station is meeting its public interest obligation.”<sup>16</sup> The Commission tentatively concluded that it should require television licensees to make the contents of their public inspection files, including a standardized form reflecting the stations’ public interest programming, available on their stations’ websites or, alternatively, on the website of their state broadcasters association.<sup>17</sup> In 2007, the Commission adopted a *Report and Order* implementing these proposals.<sup>18</sup>

7. Following the release of the 2007 *Report and Order*, the Commission received petitions for reconsideration from several industry petitioners and public interest advocates. The industry petitioners raised a number of issues, generally contending that the requirements were overly complex and burdensome.<sup>19</sup> Public interest advocates argued that the political file<sup>20</sup> should be included in the online public file requirement rather than exempted as provided in the 2007 *Report and Order*.<sup>21</sup> In addition, five parties appealed the 2007 *Report and Order*, and the cases were consolidated in the United States Court of Appeals for the District of Columbia Circuit.<sup>22</sup> The court granted a petition to hold the proceeding in

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<sup>14</sup> *Commission’s Rules Relating to Inspection of Records* at ¶ 9 (citing, e.g., *Senate Report No. 690*, 86<sup>th</sup> Cong., 1<sup>st</sup> Sess., to accompany S. 1898, “New Pre-Grant Procedure” (Aug. 12, 1969) page 2).

<sup>15</sup> *Id.* at ¶ 11.

<sup>16</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, 15 FCC Rcd 19816 (2000) (“*NPRM*”) at ¶ 1.

<sup>17</sup> *NPRM* at ¶ 31.

<sup>18</sup> *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2007) (“*2007 Report and Order*”). The standardized form component of the 2007 *Report and Order*, which was vacated in its entirety by the Commission in 2011, ¶ 9, *infra*, is being addressed in a separate proceeding. See *Standardizing Program Reporting Requirements for Broadcast Licensees*, Notice of Inquiry, 26 FCC Rcd 16525 (2011).

<sup>19</sup> See, e.g., Association of Public Television Stations and PBS Petition for Reconsideration (“*APTS & PBS Petition*”) at 3-5; Broadcasting Licenses Limited Partnership Petition for Reconsideration at 3,7; Joint Broadcasters Petition for Reconsideration at 18-22; Joint Public Television Licensees Petition for Reconsideration at 9-10.

<sup>20</sup> Sections 73.3526(e)(6), 73.3527(e)(5) and 73.1943 of the Commission’s rules require that stations keep as part of the public inspection files a “political file.” 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5), 73.1943. The political file chiefly consists of “a complete and orderly record ... of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted.” 47 C.F.R. §73.1943(a).

<sup>21</sup> CLC *et al.* Petition for Reconsideration at 3-7.

<sup>22</sup> *National Association of Broadcasters v. FCC*, No. 08-1135 (D.C. Cir.); *Office of Communication of the United Church of Christ, Inc. v. FCC*, No. 08-1151 (D.C. Cir.); *ABC Television Affiliates Ass’n v. FCC*, No. 08-1185 (D.C. Cir.); *The Walt Disney Company v. FCC*, No. 08-1186 (D.C. Cir.); *CBS Corporation v. FCC*, No. 08-1187 (D.C. Cir.).

abeyance while the Commission reviewed the petitions for reconsideration.<sup>23</sup> Challenging the rules in a third forum, several parties opposed the *2007 Report and Order*'s "information collection" under the Paperwork Reduction Act.<sup>24</sup>

8. In June 2011, Commission staff released "The Information Needs of Communities" Report ("*INC Report*"), a comprehensive report on the current state of the media landscape created by a working group including Commission staff, scholars, and consultants.<sup>25</sup> The *INC Report* discussed both the need to empower citizens to ensure that broadcasters serve their communities in exchange for the use of public spectrum, and the need to remove unnecessary burdens on broadcasters who aim to serve their communities. The *INC Report* recommended an online system for public inspection files in order to ensure greater public access.<sup>26</sup> It also recommended that stations be required to disclose online shared services agreements and "pay-for-play" arrangements.<sup>27</sup> The *INC Report* further suggested that governments at all levels collect and publish data in forms that make it easy for citizens, entrepreneurs, software developers, and reporters to access and analyze information to enable them to present the data in more useful formats,<sup>28</sup> and noted that greater transparency by government and media companies can help reduce the cost of reporting, empower consumers, and foster innovation.<sup>29</sup>

9. In October 2011, the Commission vacated the *2007 Report and Order*, determining that technological and marketplace changes since 2007 may be pertinent to our consideration of television broadcasters' public disclosure obligations, and that the best course of action would be to take a fresh look at the policy issues raised in this proceeding.<sup>30</sup> The Commission also adopted an *FNPRM* to refresh the record in this proceeding. It solicited comment on various proposals, including some of the proposals

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<sup>23</sup> Order, *National Association of Broadcasters v. FCC*, Nos. 08-1135 *et al.* (D.C. Cir.) (July 11, 2008).

<sup>24</sup> The Paperwork Reduction Act of 1995, Pub. L. No. 104-13, requires that the Office of Management and Budget ("OMB") approve any information collections. As required, the Commission published a notice in the Federal Register seeking comment on the projected burdens of the rules. See 73 FR 13462 (Mar. 13, 2008); 73 FR 30316 (May 27, 2008). Because of pending petitions for reconsideration requesting substantial revisions to the *2007 Report and Order* that would affect the projected burdens, the Commission did not formally transmit the information collection to OMB for its approval, choosing instead to address the petitions for reconsideration, and therefore the rules adopted in the *2007 Report and Order* never went into effect.

<sup>25</sup> "The Information Needs of Communities: The Changing Media Landscape in a Broadband Age," by Steven Waldman and the Working Group on Information Needs of Communities (June 2011), available at [www.fcc.gov/infonedsreport](http://www.fcc.gov/infonedsreport). As noted in the *INC Report*, the views of the report "do not necessarily represent the views of the Federal Communications Commission, its Commissioners or any individual Bureaus or Offices." *Id.* at 362.

<sup>26</sup> *INC Report* at 28, 348.

<sup>27</sup> *INC Report* at 28, 348-49. The Commission has previously noted that "pay-for-play" is "particularly common with regard to the airplay of music." *Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324, ¶ 98 (2008). In this item, we use the term "pay-for-play" more broadly to refer to any kind of payola situation. "Payola" is the "unreported payment to, or acceptance by, employees of broadcast stations, program producers or program suppliers of any money, service or valuable consideration to achieve airplay for any programming." *Commission Warns Licensees About Payola and Undisclosed Promotion*, Public Notice, 4 FCC Rcd 7708 (1988).

<sup>28</sup> *INC Report* at 29, 351.

<sup>29</sup> *Id.* at 28, 360.

<sup>30</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 26 FCC Rcd 15788, ¶¶ 7-9 (2011).

parties raised on reconsideration, to improve public access to information about how broadcasters are serving their communities while minimizing the burdens placed upon broadcasters.<sup>31</sup>

### III. DISCUSSION

10. The updated rules we adopt today modernize disclosure procedures to improve access to station files that, for decades, have been public more in theory than in practice. Today, reviewing a television station's public file typically involves the substantial expense and inconvenience of traveling to the station and paying for paper copies. Under our rules, review will involve a quick and essentially costless Internet search. This modernization is plain common sense. The evolution of the Internet and the spread of broadband Internet access has made it easy for stations to post material online and for many consumers to find information online.<sup>32</sup> The television broadcast industry should not be left out of the online revolution that has improved the delivery of products and services across our economy, as well as the availability of government services and government information to the public.

11. At the same time, we are committed to updating the outdated procedures for public access to television stations' public files in a manner that avoids unnecessary burdens on broadcasters. We have significantly departed from the proposals in the *FNPRM* to achieve this goal. Based on this balance of considerations, the online public file requirements we adopt today will replace the existing in-station retention requirements as follows:

- Each station's entire public file will be hosted online, by the Commission.<sup>33</sup>
- Television broadcasters will be responsible for uploading only those items now required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. These items include citizen agreements, certain EEO materials, issues/programs lists, children's television commercial limits records, donor lists for NCEs, local public notice announcements, time brokerage agreements, must-carry or retransmission consent elections, joint sales agreements, Class A continuing eligibility documentation, materials related to FCC investigations (other than investigative information requests from the Commission), and any new political file materials.
- Any document or information now required to be kept in a television station's public file and that must already be filed with the Commission electronically in the Consolidated DataBase System ("CDBS") will be imported to the online public file and updated by the Commission. This includes authorizations, applications and related materials, contour maps, ownership reports and related

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<sup>31</sup> *Id.* at ¶¶ 8-41.

<sup>32</sup> See Pew Research Center's Project for Excellence in Journalism, Pew Internet & American Life Project, and the Knight Foundation, *How People Learn about their Local Community* at 22 (Sept. 2011), available at <http://pewinternet.org/~media/Files/Reports/2011/Pew%20Knight%20Local%20News%20Report%20FINAL.pdf> ("Among the 79% of Americans who are online, the internet is . . . the first or second most important source for 15 of the 16 local topics examined [including weather, politics and elections, breaking news, arts and cultural events, local businesses, schools and education, community and neighborhood events, restaurants, traffic, taxes, housing, government, job openings, social services, and zoning]."); Pew Research Center for the People and the Press, *Internet Gains on Television as Public's Main News Source* (Jan. 4, 2011), available at <http://pewresearch.org/pubs/1844/poll-main-source-national-international-news-internet-television-newspapers> (In a 2010 survey "41% said they get most of their news about national and international news from the internet, . . . up 17 points since 2007.").

<sup>33</sup> Excepted from this requirement are existing political file material and letters and emails to the station, which will be retained in the station's local file. See Section III.C.2, *infra*.

materials, EEO materials, The Public and Broadcasting manual, children's television programming reports, and Letters of Inquiry and other investigative information requests from the Commission, unless otherwise directed by the inquiry itself.

- Television stations will not be required to upload their existing political files to the online file; rather, they will be permitted to maintain at the station those documents placed in their political file before the effective date of our rules, and only upload documents to the online political file on a going-forward basis.
- To smooth the transition for both stations and the Commission and to allow smaller broadcasters additional time to begin posting their political files online, we will exempt all stations that are not in the top 50 DMAs and all stations not affiliated with the top four national television broadcast networks, regardless of the size of the market they serve, from having to post new political file materials online until July 1, 2014.
- Stations will not be required to upload letters and emails from the public to their online public file; rather, they will continue to maintain them in a correspondence file at the main studio.
- Stations will not be required to include in their online public file any documents not already required to be included in their local file.

We believe these procedures will substantially advance the original goals of the public file requirements and better enable the public to engage with their local broadcasters. Further, while broadcasters will incur a modest, one-time transitional cost to upload some portions of their existing public file to the Commission's online database, that initial expense will be offset by the public benefits of online disclosure. Over time, moreover, broadcasters will benefit from the lower costs of sending documents electronically to the Commission, as opposed to creating and maintaining a paper file at the station.

**A. A Commission-Hosted Online Public File Will Serve the Public Interest.**

12. We agree with commenters who maintain that placing the public file online will improve the public's access to information and facilitate dialogue between broadcast stations and the communities they serve.<sup>34</sup> As the Commission noted in the *FNPRM*, making public file information available through the Internet should facilitate public access and foster increased public participation in the licensing process.<sup>35</sup> The information provided in the public file is beneficial to persons who wish to participate in a station's license renewal proceeding. For example, as the Public Interest, Public Airwaves Coalition ("PIPAC") notes, when broadcasters fall short of their obligations or violate Commission rules, the public's ability to alert the Commission by filing complaints or petitions to deny the renewal of a station's broadcast license is essential, and the public file provides information necessary to file such complaints or petitions.<sup>36</sup>

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<sup>34</sup> Association of Public Television Stations and the Public Broadcasting Service ("APTS and PBS") Comments at 1-2; PIPAC Comments at 6; LUC Media at 1; United States Conference of Catholic Bishops Media and Democracy Coalition Comments; The Carnegie-Knight Task Force Comments.

<sup>35</sup> *FNPRM* at 15796.

<sup>36</sup> PIPAC Comments at 6. During the 1980s, when the Commission eliminated several of its longstanding requirements for television with respect to non-entertainment programming, commercialization, ascertainment and program logging, it continued to rely on the public's access to quarterly issues/programs lists found in station's public files as the basis for citizens' complaints and petitions to deny filed to ensure that licensees' continued to

(continued....)

13. We also agree with commenters that access to the public files has been inconveniently (and unnecessarily) limited by current procedures.<sup>37</sup> Currently, the public can access a station's public files only by visiting the main studio during regular business hours. Several commenters discussed the inconvenience of this limited access and identified problems they experienced in attempting to access stations' public files.<sup>38</sup> Making the information available online will permit 24-hour access from any location, without requiring a visit to the station, thereby greatly increasing public access to information on how a station is meeting its public interest obligations. The Internet is an effective and low-cost method of maintaining contact with, and distributing information to, broadcast viewers. Indeed, given the considerable flexibility that stations have in locating their main studios<sup>39</sup> and the fact that many members of a station's audience may be working during "normal business hours" – the only time stations are obliged to make the file available – there seems little doubt that 24-hour Internet access would greatly improve the accessibility of these files.<sup>40</sup> The public benefits of posting this information online, while difficult to quantify with exactitude, are unquestionably substantial.

14. We further conclude that it will be efficient for the public and ultimately less burdensome for stations to have their public files available in a centralized location. The Commission will, therefore, host the online public file. A Commission-hosted online public file will allow consumers to easily find the public files of all stations in their viewing area, making the Commission's website a one-stop shop for information about all broadcast television stations in a viewer's market and eliminating the need to access multiple stations' websites. As we further discuss below, a uniform organizational structure among all files will allow consumers to more easily navigate the public files of all stations of interest.<sup>41</sup> The public will be able to review the online public file of any station, and quickly navigate to where each category of documents is found, because each station's online public file will be organized in the same format.

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serve the public interest. *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1075, ¶ 3 (1984), *recon. denied*, 104 F.C.C.2d 357 (1986), *aff'd in part, remanded in part, Action for Children's Television v. FCC*, 821 F.2d 741 (D.C. Cir. 1987). Similarly, the Commission relied on the public's continued access to licensees' public inspection files when it implemented its expedited license renewal process, as granting a simplified renewal application presumes it will serve the public interest – a presumption which can be rebutted by complaints or petitions to deny filed by the public. *See Revisions of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees*, Report and Order, 49 RR 2d 740, 46 Fed. Reg. 26236 ¶¶ 14, 26, 29 (1981), *recon. denied*, 87 FCC 2d 1127 (1981), *aff'd sub nom. Black Citizens for Fair Media v. FCC*, 719 F.2d 407 (D.C. Cir. 1983).

<sup>37</sup> PIPAC Comments at 8, LUC Media Reply at 3, Michigan Campaign Finance Network Comments at 2.

<sup>38</sup> *See, e.g.*, Association for Education in Journalism and Mass Communication Reply; Media Reform of South Carolina Comments; Michigan Campaign Finance Network Comments; Public Interest, Public Airwaves Coalition ("PIPAC") Comments at 8-9; Media and Democracy Coalition Comments.

<sup>39</sup> *See* 47 C.F.R. §73.1125(a), which permits a station to locate its main studio anywhere within its community of license, within 25 miles of the center of its community of license or anywhere within the principal community signal contour of any AM, FM or TV station licensed to its community, which could be even farther away than permitted by the 25-mile criterion.

<sup>40</sup> Although Section 73.3526(c)(2) of the Commission's public file rule, 47 C.F.R. §73.3526(c)(2), requires stations with main studios located outside their communities of license to make copies of materials in their public file available to people within their geographic service area and assist them in identifying relevant material, this "remote" process is complicated and less transparent than permitting individuals to examine the file at their convenience from any computer or Internet access device.

<sup>41</sup> Common Frequency Comments at 2; LUC Media Comments at 6; Sunlight Foundation Comments at 2; PIPAC Comments at 7; Media and Democracy Coalition Comments; Comments of D. Herzog.



15. The Commission's hosting of the public file also addresses concerns expressed by many broadcasters about the burden of hosting files online themselves. The rules adopted in 2007 would have required stations to host their public files on their own websites. In petitions for reconsideration, two broadcast trade associations proposed that the Commission host the files instead, suggesting that such a solution would be less burdensome to licensees, who would not have to devote resources to creating and maintaining an online public file. They also contended this approach would be more efficient, since many public file items are already filed with the Commission.<sup>42</sup> For instance, the Named State Broadcasters Associations estimated that the Commission's hosting of the files would save broadcasters more than \$24 million in first-year costs, and almost \$14 million in annual costs thereafter.<sup>43</sup> We agree that having the Commission host stations' public file information will ultimately reduce costs for stations – compared to the existing local file requirements.

16. We agree with commenters who reject the argument that there is no public need that can be met by placing online the political file portion of the station's public inspection file.<sup>44</sup> As noted by commenters, placing the political file online will enable candidates, as well as the public, journalists, educators, and the research community, to identify and investigate those sponsoring political advertisements.<sup>45</sup> Under current rules, the political file must contain, among other things, all specific requests for broadcast time made by or on behalf of a candidate and the disposition of those requests.<sup>46</sup> It must also contain information regarding other appearances by candidates (excluding those in certain news programming exempt from the equal opportunities provision),<sup>47</sup> and information about issue advertising that "communicates a message relating to any political matter of national importance."<sup>48</sup> As noted by some commenters, political ad spending is rapidly increasing,<sup>49</sup> and often the only way to track such expenditures is through stations' political files.<sup>50</sup> We also agree with PIPAC's assertion that the disclosures included in the political file further the First Amendment's goal of an informed electorate that is able to evaluate the validity of messages and hold accountable the interests that disseminate political advocacy.<sup>51</sup> As the Supreme Court stated in *Citizens United v. FEC*, "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages" and that, "[w]ith the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and

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<sup>42</sup> Named State Broadcasters Assn. Petition at 8; Association of Public TV Stations and PBS Reply at 8.

<sup>43</sup> Named State Broadcasters Assn. Petition at 8, citing estimates from one "experienced and well-respected vendor." We note that Named State Broadcasters Association is now suggesting that we consider allowing stations to host their public files on their own websites. Named State Broadcasters Assn. Comments at 18. For the reasons we discuss below, we decline to adopt this option.

<sup>44</sup> North Carolina Assn. of Broadcasters *et al.* Comments at 8.

<sup>45</sup> Association for Education in Journalism and Mass Communication Comments at 1; Sunlight Foundation Comments at 1-2; Brennan Center for Justice Comments at 1-2; Michigan Campaign Finance Network Comments at 2.

<sup>46</sup> 47 C.F.R. § 73.1943

<sup>47</sup> *See Id.*

<sup>48</sup> 47 U.S.C. § 315(e).

<sup>49</sup> LUC Media Reply at 2; PIPAC Reply at 4.

<sup>50</sup> Brennan Center for Justice Comments at 2.

<sup>51</sup> PIPAC Reply at 5.

supporters.”<sup>52</sup>

17. Campaigns and candidates will be among those who benefit from being able to obtain political file information online. Some industry comments argue that candidates will obtain only limited benefits and possibly experience detrimental effects from moving the political file online.<sup>53</sup> Broadcasters argue that the existing process serves the candidates and the stations well, and there is no reason to believe that changing the process will benefit candidates or campaigns.<sup>54</sup> Other broadcasters argue that it is more meaningful and efficient for a candidate’s representatives to speak with a station’s sales department on the phone or in person.<sup>55</sup> According to these broadcasters, personal interactions would be lost if the political file were to be placed online, which would be frustrating and create inefficiencies for advertising buyers and station staff.<sup>56</sup> Although some stations may elect to continue to make information routinely available to candidates through personal interaction at the station during business hours, which we do not intend to discourage, we expect that candidates and their representatives will use the online political file to obtain information from source documents without filtering by station personnel and at any time of day. LUC Media, a candidate media buyer, argues that “the only way that candidates can make sure that they receive the availabilities and prices that the law requires is to have access to stations’ and cable television systems’ political files.”<sup>57</sup> LUC Media claims that the political file is necessary because “stations and cable television systems have learned over the years that, if they can limit the information that candidates have about availabilities and rates, they can get candidates to overpay for the airtime that they buy.”<sup>58</sup> While LUC Media notes that this is not the practice of all stations, LUC Media routinely reviews stations’ political files to ensure that they are providing candidates with equal opportunities, which is why “the Commission requires that this information be available for public inspection.”<sup>59</sup> LUC argues that “Internet access to those files will enable more candidates to become better informed about availabilities and pricing and, thus, demand that they receive the lowest unit charge for the time that they buy.”<sup>60</sup> Internet access will also eliminate the need for such buyers to travel to every

<sup>52</sup> *Citizens United v. Federal Election Commission*, 130 S.Ct. 876, 916 (2011). We are also persuaded by commenters claiming that “the public must have access to information about the messenger as well as the message to fully understand an ad’s content.” Sunlight Foundation Comments at 2. See also Comments of Glenn Frankel, Journalism Professor at 2. As discussed below, under Commission rules, when “material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter,” stations must disclose “a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity . . . .” 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212(e); see ¶ 79, *infra*.

<sup>53</sup> Joint Broadcasters Comments at 5; Joint Television Parties Reply at 11; North Carolina Assn. of Broadcasters *et al.* Comments at 13; Joint Broadcasters at 5; NAB Reply at 15-16.

<sup>54</sup> Joint Television Parties Reply at 11; NAB Reply at 15.

<sup>55</sup> North Carolina Assn. of Broadcasters *et al.* Comments at 13; NAB Reply at 15.

<sup>56</sup> *Id.* We fail to see how the online availability of past political time purchases will discourage buyers from having contact with the station concerning current and future time buys or how this information’s availability will interfere with ongoing relationships between the stations and buyers. The fact that buyers and candidates will have increased ease of access to relevant information should not preclude or hinder candidates or buyers from a continuing dialogue with stations as they purchase time.

<sup>57</sup> LUC Media Reply Comments at 4.

<sup>58</sup> *Id.*

<sup>59</sup> LUC Media Comments at 3-4.

<sup>60</sup> LUC Media Reply Comments at 4-5.

station in a market to verify the contents of the public file, and to ask for help from station employees who have to take time away from their normal duties to accommodate such requests.<sup>61</sup> We agree with LUC Media that placing the political file online will enhance the underlying purpose of the political file.

18. Some broadcasters argue that the Commission's focus in this proceeding has inappropriately changed from increasing broadcast dialogue with the public to enabling access to information about the stations for research and public advocacy groups with no ties to the broadcast stations' communities.<sup>62</sup> We do not perceive the dichotomy these broadcasters suggest. While the public file is first and foremost a tool for community members, it is also a tool for the larger media policy community. Public advocacy groups, journalists, and researchers act in part as surrogates for the viewing public in evaluating and reporting on broadcast stations' performance. And as we stated in the *FNPRM*, easy access to public file information will assist the Commission, Congress, and researchers as they fashion public policy and recommendations relating to broadcasting and other media issues.<sup>63</sup> For example, the Commission has said that "the quarterly issues/programs lists will provide the public and the Commission with the information needed to monitor licensees' performance under this new regulatory scheme and thus permit us to evaluate the impact of our decision. Existing procedures such as citizen complaints and petitions to deny will continue to function as important tools in this regard."<sup>64</sup> Academic analysis of such lists help the Commission monitor whether stations are meeting their responsibilities to their local community, and can provide information relevant to citizen complaints and petitions to deny. We recognize the efforts of public interest groups and academics to analyze publicly available information and educate the public about how their local stations are serving their communities, and believe that this work is an important aspect of educating viewers about their local television broadcast stations.

**B. Broadcasters' Initial Costs To Comply Will Be Minimized and the Online Public File Will Ultimately Lead To Cost Savings.**

**1. We Are Tailoring the Requirements to Minimize Costs of Moving the Public Files Online.**

19. We have adopted a variety of measures to minimize the efforts broadcasters must undertake to move their public files online. In addition, we have declined to adopt certain proposals in the *FNPRM* at this time, to further ensure that the costs of compliance with the new posting procedures are outweighed by the benefits of online disclosure.

20. First, we are minimizing burdens on stations by not requiring them to upload documents that are currently part of the public file but which are also filed in the Consolidated DataBase System ("CDBS") or that the Commission already maintains on its own website. The Commission will import these documents into the online public file. Documents that fall in this category include station authorizations, applications and related materials, contour maps, ownership reports and related materials, EEO materials, The Public and Broadcasting manual, children's television programming reports, and Letters

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<sup>61</sup> LUC Media Comments at 5, Reply Comments at 3.

<sup>62</sup> Named State Broadcasters Assn. Comments at 3; Network Station Owners Reply at 12; Channel 51 of San Diego *et al.* ("Four Commercial and NCE Licensees") Comments at 3; North Carolina Assn. of Broadcasters *et al.* Comments at 12.

<sup>63</sup> *FNPRM* at ¶ 14.

<sup>64</sup> *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1075, ¶ 3 (1984).

of Inquiry and other investigative information requests from the Commission, unless otherwise directed by the inquiry itself. Broadcasters will be responsible for uploading only those items not otherwise filed with the Commission or available on the Commission's website.

21. We recognize that stations' need to upload other items in the public file – including citizen agreements, certain EEO materials, issues/programs lists, children's television commercial limits records, donor lists for NCEs, local public notice announcements, time brokerage agreements, must-carry or retransmission consent elections, joint sales agreements, Class A continuing eligibility documentation, materials related to FCC investigations (other than investigative information requests from the Commission), and new political file materials – will entail some burden initially, inasmuch as stations will have to upload electronic versions or scan and upload paper versions of existing public files to the online public file. But not all stations will have all of these documents. For example, a station may not have time brokerage agreements,<sup>65</sup> joint sales agreements,<sup>66</sup> or citizen agreements,<sup>67</sup> and may not be a Class A station. In that situation, there will be nothing in these categories for the station to upload. Moreover, many of the items in the public file will not require frequent updating. An LMA, for example, may have a term of 5 or more years and would not require any further action on the part of the station unless the agreement was amended or replaced. Joint sales agreements, citizen agreements, retransmission and must-carry consent elections similarly involve extended periods of time. In addition, as discussed below,<sup>68</sup> stations will not be required to upload any of their existing political file documents. Rather, stations may upload documents to the political file component of the online public file only prospectively. We conclude that, for those public file items that stations do have to post, the transitional costs would involve only a one-time burden on broadcasters that, as further explained below, we find is outweighed by the significant benefits of transitioning the public file online.

22. Second, we minimize burdens on broadcasters by declining to adopt any new recordkeeping requirements. As discussed below,<sup>69</sup> we are not adopting the proposal in the *FNPRM* to require stations to include sponsorship identification information in the online public files or to include shared services agreements that are not already required to be included in the local file. Instead, only information already required to be included in the local file will need to be posted online.

23. Third, we are not requiring stations to post files online in a particular format at this time.<sup>70</sup> Thus, they will not need to undertake the costs of developing new electronic forms or of conforming their current recordkeeping practices to accommodate a Commission-designed form.

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<sup>65</sup> A time brokerage agreement is a type of contract that generally involves a station's sale of blocks of airtime to a third-party broker, who then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. Commercial radio and television stations must keep in their public files a copy of every agreement involving time brokerage of that station or of any other station owned by the same licensee. These agreements must be maintained in the file for as long as they are in force. See 47 C.F.R. § 73.3526(e)(14).

<sup>66</sup> A joint sales agreement is a type of contract that involves a station's sale of advertising time with that of another station, whether the agreement involves a station in the same market or different markets. Commercial stations must keep these agreements in the public file for as long as they are in effect. See 47 C.F.R. § 73.3526(e)(16).

<sup>67</sup> A citizen agreement is any written agreement that a licensee makes with local viewers or listeners that addresses programming, employment, or other issues of community concern. The station must keep these agreements in the public file for as long as they are in effect. See 47 C.F.R. § 73.3526(e)(3).

<sup>68</sup> See ¶¶ 43-44, *infra*.

<sup>69</sup> See Section III.C.4, *infra*.

<sup>70</sup> See Section III.D, *infra*.

## 2. Broadcast Commenters Greatly Overstate the Costs Involved.

24. Based upon the actions we are taking to minimize burdens, discussed above, and our analysis of some television stations' public files, we conclude that the broadcast commenters vastly overstate the burdens of moving their public files online.

25. The Commission is taking steps to ensure that the process of uploading files to the online public file – both initially and prospectively – will be simple and efficient. We are developing the online public file system to permit broadcasters simply to drag and drop documents into the relevant folders of their online public file.<sup>71</sup> As a result, although the initial upload of existing documents – that is, those documents maintained in the paper file before the effective date of our new rules – will impose some costs on stations, we do not believe these costs will be unduly burdensome, particularly compared to the resulting benefits.<sup>72</sup>

26. Some broadcasters argue that uploading the existing public file will be unduly burdensome.<sup>73</sup> They argue that we should implement the online public file requirement solely on a forward-looking basis, encompassing either all documents created after a certain date or all documents created after a station's next renewal.<sup>74</sup> Joint TV Broadcasters notes that many materials must be retained until final action is taken on a station's next license renewal application, and a decision requiring all existing local files to be scanned and uploaded would require stations to upload eight years of information that may soon be obsolete.<sup>75</sup> It argues that some of the materials, like the issues/programs lists, commercial limit certifications, and the political file, should be required to be uploaded to the online public file only on a going-forward basis.<sup>76</sup>

27. We find that the one-time electronic upload or scanning and upload of existing documents is not unduly burdensome and that adoption of a grandfathering approach would be confusing to those seeking access to the information. Such an approach would necessitate the continued maintenance of a robust local file, which could diminish the benefits to the public of the online file with respect to improved public access to information, and would diminish the benefits to the stations of moving their files online.

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<sup>71</sup> The Commission will create a folder for each of the required items to be placed in the online public file. Stations will merely be required to place their relevant documents into the applicable folder.

<sup>72</sup> See ¶ 28, *infra*.

<sup>73</sup> Joint Television Parties Reply at 21-22; Joint Broadcasters Comments at 21; Joint TV Broadcasters Comments at 15. We note that the public file may contain documents generated by the existing and prior licensees of a station. See 47 C.F.R. § 73.3527(d) (noting that when a transfer occurs, stations are required to retain public file documents that were created by the prior licensee for the requisite retention period.)

<sup>74</sup> Joint Television Parties Reply at 21-22.

<sup>75</sup> Joint TV Broadcasters Comments at 15. This commenter also notes that many television stations have not received a grant of their last renewal application due to holds of their renewals, and suggests that in such instances the public file could contain material that is now as much as 15 years old. *Id.* at 15-16. We note that stations are not required to keep all the items in the public file until final action is taken on the next license renewal. For example, citizens' agreements, time brokerage agreements, and joint sales agreements are retained for the terms of the agreements themselves, while must carry and retransmission elections are kept for three years and donor lists are retained for two years. Further, all stations will be exempted from uploading their existing political file, as the commenter proposes, and many will be exempt from providing it on a going-forward basis until July 1, 2014. Moreover, the political file is subject to a two-year retention requirement. Finally, as noted earlier, no station will be required to upload letters or emails received from its viewers.

<sup>76</sup> Joint TV Broadcasters Comments at 17. See also Joint Broadcasters Comments at 21.

We agree with Common Frequency that scanning existing paper documents does not constitute an extraordinary burden, as it is a rote process that can be affordably outsourced if necessary.<sup>77</sup> In addition, if the documents are currently maintained in electronic form, as some are likely to be, the one-time burden will be de minimis.<sup>78</sup>

28. Our determination that the transition process will not be unduly burdensome is based in part on a review, in March 2012, of the public files of stations in the Baltimore DMA.<sup>79</sup> Our review of the Baltimore DMA public files indicates that most stations will only need to upload a fraction of their existing public file to the online public file – or approximately 250 to 2200 pages, as reflected in the second column of the chart below. Columns three and four reflect what we believe the costs are likely to be for stations to upload this information. We estimate that stations that choose to scan and upload this information in-house can do so for \$.10 per page,<sup>80</sup> while stations can outsource such work for approximately \$.50 per page. Based on this assumed cost of \$.10 to \$.50 per page, we calculate a range of the average cost for a station to upload their existing public file in accordance with this Order, with the average cost per station ranging from approximately \$80-\$400 per station. We believe that this modest one-time expenditure (even if it were not offset by later costs savings as we believe it will be) is worth the benefits of providing the public with access to a station's existing public file.<sup>81</sup>

	Public file pages to upload w/in 6 months <sup>1</sup>	In-House cost per page <sup>1</sup>	Outsourced cost per page	In-House Total	Outsourced Total
WBAL-TV	998	0.1	0.5	\$99.80	\$499.00
WMAR-TV	987	0	0	\$0.00	\$0.00
WJZ-TV	844	0.1	0.5	\$84.40	\$422.00
WNUV	251	0.1	0.5	\$25.10	\$125.50
WBFF	2094	0.1	0.5	\$209.40	\$1,047.00
WUTB	2126	0.1	0.5	\$212.60	\$1,063.00
WMPT	2180	0	0	\$0.00	\$0.00
WMPB	2180	0	0	\$0.00	\$0.00
Total	11660			\$631.30	\$3,156.50
Average	1457.5			\$78.91	\$394.56

<sup>77</sup> Common Frequency Comments at 3.

<sup>78</sup> FCC staff reviewed the public files for all eight television stations in the Baltimore DMA. One station provided the entirety of their public file to us electronically. Two others provided virtually all of their materials electronically. Stations that maintain records in this manner will be able to upload their existing files to the FCC database especially easily.

<sup>79</sup> Commenters provided little data based on actual station records. The Commission therefore determined that it was advisable to supplement the record with empirical data from a sample market. Baltimore was selected because its proximity to Commission headquarters in Washington, DC, and the relatively compact size of the Baltimore DMA allowed staff to visit stations there without great difficulty.

<sup>80</sup> Under the Freedom of Information Act, the Commission is allowed to charge for our research and reproduction services under certain conditions. See <http://www.fcc.gov/guides/how-file-foia-request>. We have determined those costs to be \$.10 per page. See Modification of the Freedom of Information Act Fee Schedule, D.A. 10-97 (Jan. 19, 2010). We believe this to be an accurate reflection of actual reproduction costs, and we expect that scanning costs would be equal to this or lower, because paper, ink, and fasteners are not required.

<sup>81</sup> As discussed below, we reach a different conclusion with respect to the political file, concluding that stations need not upload their existing political files.

29. We agree with commenters that, once they incur these modest costs, stations will realize savings by no longer having to keep a local file on a going-forward basis.<sup>82</sup> Placing the information online will minimize disruptions in the daily operation of a station, and reduce the burdens placed on station staff that currently field phone calls and chaperone in-person requests to inspect the files.<sup>83</sup> When Commission staff sought to obtain the public files of the Baltimore stations, as well as those of five other stations around the country, stations dedicated staff resources to copying the files, and were in no case able to provide the copies on the same day as the request. Further, once broadcasters have completed the initial upload of documents in the existing public files, as specified herein, we do not believe that uploading public file documents on a going-forward basis to an online public file is likely to be any more burdensome than placing such documents into a paper file. Indeed, in many instances, using the online public file will be less burdensome, because uploading (or even scanning, then uploading) a file may be easier and more efficient than photocopying it, walking it to the local paper file, finding the appropriate folder and inserting it in the proper order.<sup>84</sup>

30. The industry's arguments regarding the costs involved with uploading documents to the online public file focus on the political file, which they identify as the most active element of the public file. NAB states that two stations have estimated that the time involved in completing political ad buys will "essentially double" in an online environment, at a cost of \$80,000 per station.<sup>85</sup> Joint Broadcasters estimates that "creating electronic versions of all political time requests" and uploading such documents will take one half hour per record, which would amount to almost 16 hours per week per station during the political season, compared to the 2.5 hours a week that stations spend under the current paper filing system.<sup>86</sup> We find unpersuasive the argument that the time required to assemble the online political file will double or quadruple. Instead of photocopying documents and placing them in a paper public file, stations will upload to the online public file documents already stored in electronic format or scan paper documents (a process akin to photocopying) and upload the electronic versions.<sup>87</sup> Given that the

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<sup>82</sup> PIPAC Comments at 10-11; Reply at 10; LUC Media Comments at 3; Sunlight Foundation Comments at 3. We recognize that stations will be required to maintain and make publicly available a correspondence file with letters and emails from the public, but we agree with commenters that stations will nonetheless realize significant reductions in burdens by not having to maintain a more robust local file.

<sup>83</sup> PIPAC Comments at 10-11, 17. Our current rules do not require stations to accommodate political file requests over the phone, because such a requirement could disrupt station operations. 47 C.F.R. § 3526(c)(2)(i). We expect that requiring stations to place the public files online will have a similar beneficial effect; reducing rather than expanding, disruptions to operations at the station as station personnel would no longer have to process requests for access to this information in person, as they are currently required to do. Instead of accommodating each candidate or their campaign representatives personally on a frequent basis, an online requirement will allow a station to upload the most up-to-date information periodically for all interested parties. As discussed below, however, we are requiring stations to maintain a back-up of the political file for use in the event the Commission's database becomes unavailable or disabled.

<sup>84</sup> See fn 89, *infra*.

<sup>85</sup> NAB Comments at 18-19, Reply at 12.

<sup>86</sup> Joint Broadcasters Comments at 13-14.

<sup>87</sup> One commenter notes that not all stations own a scanner, or a scanner of sufficient quality to make copies of documents adequate for uploading to the Commission's online public file. North Carolina Assn. of Broadcasters *et al.* Comments at 10-11. For stations that do not wish to make this minor investment, other business solutions are available, including creating documents electronically or outsourcing the scanning functions. Scanning costs may be higher on a per-page basis if outsourced, just as it would be more expensive per page to outsource the copying and filing of paper copies. Given that stations will be uploading fewer documents into the online public file than they currently place in their paper files, we expect that station costs going forward will be lower than under the existing requirements.

requirement to drag and drop the files into our online public file will *replace* the requirement to photocopy and walk the documents to the local file, we expect that fulfilling this requirement will not take substantially more time and may take less time to accomplish. Broadcasters provide no specific support for their facially implausible assertion that creating electronic versions of political file requests and uploading them would take a half hour. Moreover, they fail to acknowledge that the time involved in uploading documents electronically should decrease substantially with time as station personnel become more accustomed to this process.<sup>88</sup>

31. We also disagree with the commenter who projects that the proposed online public file, and specifically the political file and sponsorship identification requirements, will require each station to hire one to three employees at an average cost of \$30,000 to \$140,000 per station per year.<sup>89</sup> On the contrary, given that the requirement to upload the files will replace rather than add to the existing file requirements, we expect that stations will be able to assign these responsibilities to existing staff, rather than hire additional staff. We fail to see how this requirement could legitimately result in the need to hire three additional staff members, even in the heat of an election. Moreover, the commenters' estimated figures include the costs of complying with the *FNPRM*'s proposed new public file requirement for sponsorship identification, which, as we discuss below, we are not adopting. Further, to the extent these figures include costs associated with the initial upload of the existing political file, they overestimate the burden on broadcasters because we do not require the existing political file to be uploaded.

32. We note that because the size of the political file appears to roughly correlate with a station's political advertising revenues, stations with little or no revenue will have little to no obligations under these rules, and stations with larger numbers of pages to upload will tend to have similarly large income associated with those pages.<sup>90</sup> When balanced against the revenues earned from political advertising – which brought broadcasters an estimated \$2.29 billion in 2010 and are expected to bring in even more in 2012<sup>91</sup> – the costs of complying with the online posting requirement seem even less significant. Indeed, political files reviewed by Commission staff, from markets across the country, generally reflect that stations receive political advertising revenues of thousands of dollars per page of political file that must be uploaded. We also agree with commenters who note that ad buyers, candidates, and the public must today undertake burdens to obtain information about the political file, including traveling from station to station to obtain political file information.<sup>92</sup> Our collection of the Baltimore DMA public files required, in total, dozens of person-hours, driving back and forth to stations (first to request the copies and then to collect them), and copying costs that were estimated at close to \$1,700 by the stations themselves. Our action today will substantially reduce or eliminate each of those burdens.

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<sup>88</sup> As discussed further in Section III.C.1 below, stations are required to “keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted.” 47 C.F.R. § 73.1943. We note that political files that Commission staff reviewed frequently contained more information than is required by our rules. Stations that are concerned about the burdensomeness of placing their political file online on a going-forward basis may wish to review their political file retention practices.

<sup>89</sup> Letter from Mark Prak, Counsel for Hearst Television, Inc., to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 (filed Dec. 14, 2011); *see also* Named State Broadcasters Assn. Comments at 12.

<sup>90</sup> In addition, although candidate advertising must be sold at the lowest unit charge, issue advertisers are not entitled to reduced rates and therefore pay market rates for advertising on broadcast stations.

<sup>91</sup> PIPAC Reply at 4. *See also* LUC Media Reply at 4 (stating that projections estimate that broadcasters will make roughly \$3.2 billion in political advertising this year).

<sup>92</sup> LUC Media Comments at 4-5.



### C. Application of Online Posting Rule to Specific Public File Components.

#### 1. Political File.

33. We consider public access to stations' political files particularly important. Therefore, we will adopt the proposal in the *FNPRM* that political files be included in the online public file, but will exempt all stations not in the top 50 DMAs, and all stations in the top 50 DMAs that are not affiliated with the top four national television broadcast networks, from posting their political file documents online until July 1, 2014. Prior to this exemption expiring – by July 1, 2013 – the Media Bureau will issue a Public Notice seeking comment on the impact of moving online the political files for these 200 stations, to enable us to consider whether any changes should be made before the requirement takes effect for the other stations. In addition, as discussed above, we will not require any stations to upload their existing political file; rather, they will be required to upload new political file content on a going-forward basis.

34. We believe circumstances have changed to warrant reaching a different conclusion about posting the political file online than we reached in the *2007 Report and Order*. In the *2007 Report and Order*, the Commission excluded the political file from the requirement that stations post their public files on their websites.<sup>93</sup> The Commission determined that the frequent requests for access by campaigns and the need for stations to update the file frequently during an election season made an online posting requirement inappropriate.<sup>94</sup> The Commission also reasoned that political campaigns generally have greater resources than individual viewers and, therefore, access to the in-station political file would tend to be less burdensome for campaign organizations.<sup>95</sup> Petitioners for reconsideration argued that such a decision focused exclusively on the interests of the candidates and broadcasters, and not on the public.<sup>96</sup> In addition, as the Commission noted in the *FNPRM*, television stations now handle many political advertising transactions electronically, through emails and a variety of software applications.<sup>97</sup> As a result, requiring stations to make this information publicly available online will impose far less of a burden under current circumstances than under previous conditions.<sup>98</sup> We thus disagree with arguments that the Commission does not have a sufficient basis to reverse the decision of the *2007 Report and Order* to exclude the political file from the online requirement.<sup>99</sup> Our understanding of how stations manage their political transactions and their traffic systems,<sup>100</sup> technological advances that have occurred since the *2007 Report and Order*, and our decision to host and centralize the online public file support our revised approach. Below, moreover, we respond to specific arguments that we should exclude the political file from the online public file.

<sup>93</sup> See *2007 Report and Order* at ¶¶ 19-20; see also *FNPRM* at ¶¶ 20-22.

<sup>94</sup> See *2007 Report and Order* at ¶ 20.

<sup>95</sup> *Id.*

<sup>96</sup> Campaign Legal Center *et al.* Petition for Reconsideration at 3.

<sup>97</sup> *FNPRM* at ¶ 23.

<sup>98</sup> *Id.*

<sup>99</sup> North Carolina Assn. of Broadcasters *et al.* Comments at 8, Reply at 4; Joint Broadcasters at 4-5; Network Station Owners Reply at 7-8; Joint Television Parties Reply at 4.

<sup>100</sup> A traffic system is a "system for scheduling of program material, and in particular the advertisements, for the broadcast day. The result of this scheduling is a daily playlist for a channel." See [http://documentation.vizrt.com/viz-multichannel-guide/2.6/01\\_overview\\_important\\_terms.html](http://documentation.vizrt.com/viz-multichannel-guide/2.6/01_overview_important_terms.html)

35. *Electronic Processes.* Some industry commenters argue that our understanding that stations now conduct political advertising transactions electronically is incorrect.<sup>101</sup> They argue that for some candidates the purchasing process is not electronic, but done through a variety of means, including phone, fax, and in person.<sup>102</sup> For political ad buys, the process can be multi-staged. They state that negotiations may result in many entries into the political file before an agreement to provide time is reached.<sup>103</sup> After an agreement is reached, the actual times the advertisement is aired can still change if the spot is purchased on a preemptible basis.<sup>104</sup> In addition, NAB states that national advertising sales representatives communicate with the stations they represent using proprietary software that varies among companies and may not include information about classes of time or rates in the documents they generate, and therefore do not provide sufficient information to fulfill the political file documentation requirements.<sup>105</sup> Thus, these parties argue, stations do not collect information in a uniform manner, and the Commission cannot assume that all of the information that must be in the public file will be included on one form.<sup>106</sup> Further, commenters argue that computerized traffic management systems used to sell and schedule television advertising time will not in any way facilitate compliance with an online political file requirement, as there are many different types of automated systems that collect, track, and process information in different ways.<sup>107</sup>

36. Notwithstanding these arguments, broadcasters' record descriptions of how stations actually track advertising purchases and manage the scheduling of such transactions confirms our understanding that stations are capable of, and often do, include electronic processes in their assembly of the political file.<sup>108</sup> While we recognize that there are still some portions of the sales process and political file assembly that are not fully automated, and that some stations use electronic means to a larger extent than others, our review of Baltimore political files confirms that many of the records that would be required to be in the public file originate as or are reduced to electronic files and would thus be relatively easy to upload in a universally readable format, such as .pdf. To the extent that a required document is not automatically converted to electronic form by the sales or invoice and reconciliation process, they can

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<sup>101</sup> Named State Broadcasters Assn. Comments at 6; Joint TV Broadcasters at 4; Joint Broadcasters at 6; North Carolina Assn. of Broadcasters *et al.* Comments at 9.

<sup>102</sup> NAB at 10; Joint TV Broadcasters Comments at 4; Network Station Owners Reply at 5; Bouchard Broadcasting at 1; Joint Television Parties Reply at 5.

<sup>103</sup> NAB Comments at 10. As discussed below, the political file rule does not require stations to include a record of the negotiations or back-and-forth discussions between the licensee and the candidate after the initial request is made. *See* ¶ 42, *infra*.

<sup>104</sup> NAB Comments at 11. Advertising time sold on a preemptible basis means that the advertising spot may be preempted by another advertiser and re-scheduled for another time. *Id.*

<sup>105</sup> NAB Comments at 10. *See also* North Carolina Assn. of Broadcasters *et al.* Comments at 9; Joint Broadcasters Comments at 6-7; Joint Television Parties Reply at 5.

<sup>106</sup> Joint TV Broadcasters Comments at 4; NAB Comments at 11. NAB goes on to explain that billing systems commonly used by stations generate a separate series of reports for each order. During the political season, advertisers generally order time on a weekly basis. A typical billing system will generate three documents for the political file relating to each order – one report showing the original order placed into the station's traffic system, another showing the exact times that spots ran, and a third showing the final charges paid by candidates for those spots. For each order, these reports occupy three to ten printed pages, and for very active advertisers, a weekly report may be much longer. NAB Comments at 13.

<sup>107</sup> Joint Broadcasters Comments at 7.

<sup>108</sup> NAB Comments at 12, Named State Broadcasters Assn. Comments at 8, Joint Broadcasters Comments at 8-9, Joint Television Parties Reply at 6.

be easily scanned and uploaded instead of photocopied and placed in the paper file, as is the current practice.<sup>109</sup>

37. Furthermore, we reject broadcasters' burden arguments that are based on the fact that existing electronic traffic management systems may not be programmed to allow stations to upload documents directly to a database.<sup>110</sup> According to some broadcasters, each traffic management software system provider would have to program, test, and finalize an export function tailored to the Commission's servers, consuming "hundreds of thousands of man hours," after which broadcasters would have to install this new software on their existing systems, and [t]aken together, these steps would stretch into years, and the costs would be significant."<sup>111</sup> Under the rules we are adopting, broadcasters will not need to change the software in their traffic systems to post documents to our online public file, though they are free to do so if that is the approach they wish to take. Rather, stations will either need to save such files to widely available formats such as Microsoft Word (.doc) or rich text format (.rtf), or convert the files to portable document format (.pdf), and then drag and drop those files to the Commission's online public file. We do not believe that either of these alternatives will impose appreciable increased costs on broadcasters as compared to current requirements.

38. *Increased Access to Lowest Unit Charge Information.* NAB expresses concern about the "unintended but potentially very real marketplace distortions and consequences that could occur if market sensitive information is readily accessible" to its competitors.<sup>112</sup> It notes that, in addition to broadcasters, cable operators and DBS providers must also keep a political file, and requiring only broadcasters to place their political file online would "place broadcasters at a disadvantage vis-à-vis their competitors."<sup>113</sup> NAB argues that "[b]roadcasters could see advertising revenues drop if competitors attempt to use the data in the file to undercut their rates. This disadvantage would directly harm the public," NAB continues, "because, if advertising revenue drops due to disparate regulation, stations would not be able to expand service offerings, and may have to cut back on current offerings."<sup>114</sup> Network Station Owners also express concern about making "[t]his proprietary information . . . available to commercial as well as political advertisers, to other local stations, and to competing advertising media such as cable operators, newspapers and web sites."<sup>115</sup> It argues that because the political file contains "information on the station's lowest rates on particular programs and rotations," placing the political file online will "afford a significant intelligence advantage to one side in private commercial negotiations. Armed with political file information, the shrewd time buyer's ability to drive the hardest possible bargain would be greatly enhanced by data allowing him to estimate the station's bottom line. One poker player would, in effect, have had at least a partial glance at the other's hand."<sup>116</sup>

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<sup>109</sup> PIPAC Reply at 10.

<sup>110</sup> NAB Comments at 18; Joint Broadcasters Comments at 10.

<sup>111</sup> Joint Broadcasters Comments at 10.

<sup>112</sup> NAB Comments at 7, Reply at 21-22. *See also* Network Station Owners Reply at 4, 12.

<sup>113</sup> NAB Comments at 22, Reply at 21.

<sup>114</sup> NAB Comments at 22.

<sup>115</sup> Network Station Owners Reply at 12-13.

<sup>116</sup> Network Station Owners Reply at 13-14. One party also claims that online disclosure of a station's political file will result in an uncompensated government taking in violation of the Fifth Amendment. *See* Ex Parte Presentation of Target Enterprises, dated April 19, 2012, at 9-10. We disagree. Target Enterprises is a media buyer that claims to have "buil[t] a proprietary computer statistical model and database" to enable "its clients to achieve the most effective media purchases during an election cycle." *Id.* at 9. Target claims that an uncompensated taking will

(continued...)

39. We find that placing this already-public information online will not cause significant market distortions. Furthermore, the benefits of placing the political file online are substantial, and we will not exclude it on the basis of unsubstantiated burden arguments. Broadcasters have failed to provide any evidence to support their claims of commercial harm.<sup>117</sup> Most important, we are not requiring broadcasters to make any information publicly available that stations are not already required to make public. Broadcasters have been required to make political file information including rates charged for

(...continued from previous page)

result if the details of political ad spending become available online in real-time because Target's "protected business model and proprietary approach" will be disclosed to the public and its competitors and thus "cause the value of the company to be lost." *Id.* at 9-10. We reject Target's takings claim on several grounds. The regulation at issue does not result in a "physical taking" because it does not deprive Target of any property right, much less result in a direct appropriation or physical invasion of private property; rather, it requires television broadcast stations to post online information that they already make publicly available at their stations. Indeed, television broadcast stations – not media buyers such as Target – are subject to the online requirement, and thus no direct appropriation or physical taking of Target's property can be shown. See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (to establish a physical taking requiring just compensation, a party must show a direct government appropriation or physical invasion of private property). We note that no broadcast station has raised a takings argument. Similarly, Target has failed to establish the factors required for demonstrating a regulatory taking. See *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978) (identifying several factors for determining what constitutes a "regulatory taking," including the economic impact of the regulation, the extent to which the regulation has interfered with distinct investment-backed expectations, and the character of the government action). Nothing in the Commission's regulations restricts Target's ability to use or keep confidential its computer models, database, or any other alleged "trade secrets." Moreover, Target's claim involves the general health of its business rather than specific property or estimates as to the property's likely diminution of value. As the Supreme Court has explained, unilateral expectations and abstract needs are not sufficient to raise takings concerns. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005-1006 (1984). Further, the broadcasters subject to the online posting requirement operate in an industry that has long been regulated and thus this regulatory context undercuts the reasonableness of Target's purported expectations. *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 645-646 (1993) (noting, in rejecting the claim of interference with reasonable investment backed expectations, that "those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end").

<sup>117</sup> We note that several parties raised the claim of "commercial harm" in the final weeks prior to adoption of this item, but the filings contain little more than generalized and vague assertions. See, e.g., Letter from Maureen A. O'Connell, Senior Vice President, Regulatory and Government Affairs, News Corp., to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 at 2 (filed April 19, 2012) ("placing the individual rate information online *could* cause harm to stations when they negotiate with commercial advertisers, who would know, at the click of a button, the rates that a station is charging its most favored commercial advertisers, at every station, in every market in the country") (emphasis added); Letter from Jonathan D. Blake, Covington & Burling LLP to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 at 2 (filed April 19, 2012) ("the proposal *could* motivate political buyers to shift substantial sums away from over-the air television to these other media. Such *potentially* severe marketplace disruption is contrary to the public interest.") (emphasis added); Letter from Kenneth C. Howard, JR, Counsel to The E.W. Scripps Company, to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 at 1 (filed April 18, 2012) ("by requiring broadcasters to post sensitive business information and rates online, the law *may* have the unintended consequence of putting broadcasters at a disadvantage against their competitors in the marketplace.") (emphasis added); Letter from Jane Mago, Executive Vice President and General Counsel, National Association of Broadcasters, to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 at 1 (filed April 12, 2012) ("We emphasized that the *potential* harm to television broadcasters of placing specific rate information, including the lowest unit rate information that stations must, by law, afford to political candidates, in an anonymously accessible database was real and *could* place broadcasters at a significant competitive disadvantage versus other video providers that would not have a similar requirement") (emphasis added).

political advertising, available in some form since 1938,<sup>118</sup> and anyone, including broadcasters' competitors and customers can currently access these data in the paper files. In addition, since 2002, Section 315(e) of the Act has specifically required that the political file include "the rate charged for the broadcast time."<sup>119</sup> Moreover, the public files of broadcasters' competitors have been available in paper form to television broadcasters and the public for years.<sup>120</sup> Given the mutual, long-standing public availability of such documentation and the likely knowledge of this availability among major commercial and political buyers, we do not believe that the increased ease of access to broadcasters' public files will lead to significant distortions in the marketplace.<sup>121</sup> To the extent it is economically beneficial for competitors, potential advertisers, or buyers who seek to represent advertisers, to access this data, they already have the ability to review the material at the stations.<sup>122</sup> Commenters have failed to show that an online posting requirement would alter in any meaningful way the economic incentive of these entities. Moreover, even if it had not been publicly available for decades, online posting of lowest unit charge information would not necessarily lead to marketplace distortions. While the political file lists the lowest unit charge that a candidate receives, it does not reveal significant information about the commercial transaction that established that lowest unit charge. Various factors unknown to another commercial buyer – including that the advertiser establishing the lowest unit charge bought a higher volume of ads, committed to a long-term advertising relationship, or other variables – can justify denying the lowest unit charge rate to a different commercial buyer under different circumstances.<sup>123</sup> Further, given that the statute expressly requires such information to be placed in the public file,<sup>124</sup> exempting such rate information would be contrary to the statutory directive to make the political file publicly available.

40. *Effect on How Stations Sell Time.* NAB argues that online filing would necessitate changes in how stations sell political advertising time, because "the variances in the ways in which stations manage political advertising sales and the political file" would not be compatible with a "standardization of stations' political file processes."<sup>125</sup> These arguments seem to be based on a

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<sup>118</sup> See 3 Fed. Reg. 1691 (1938).

<sup>119</sup> 47 U.S.C. § 315(e)(2)(B).

<sup>120</sup> 47 C.F.R. § 73.3526(e)(6); 47 C.F.R. § 73.3527(e)(5); 47 C.F.R. § 76.1701(a); 47 C.F.R. § 25.701(d).

<sup>121</sup> Although we do not know the exact percentage of advertisers and competitors that seek review of information in stations' political files, we are aware they do so on a regular basis, as Commission staff frequently receives calls from stations asking whether or not they must provide such entities access to the political file. As staff has previously instructed in these situations, all members of the public – including advertisers and competitors – are entitled to access a stations' political files.

<sup>122</sup> Buyers do, in fact, review the political file. See Letter from Robert S. Kahn, General Counsel, LUC Media Group, to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 at 3 (filed March 8, 2012) (discussing the database of information that LUC Media creates based in part on their review of political files). We recognize that, because of their economic incentive, competitors and potential advertisers may be more likely to undertake the expense of visiting stations to review the current political files. We expect that having the files accessible online will encourage other members of the public to make use of the political files.

<sup>123</sup> In addition, the fact that there are many variables (lengths, classes of time, and time periods) for any given lowest unit charge makes it harder for any potential purchaser to find a lowest unit charge that is comparable to the ad purchase it is seeking to make. These variables also make it difficult to compare the lowest unit charges of competing stations, as the stations may not sell the same classes of time. In the end, stations are in control of setting lowest unit rates, and have final determination of how low they are willing to set their commercial rates.

<sup>124</sup> 47 U.S.C. § 315(e)(2)(B).

<sup>125</sup> NAB Reply at 16-17; Joint Broadcasters Comments at 12.

misunderstanding of our proposal in the *FNPRM*.<sup>126</sup> As the Commission emphasized in the *FNPRM*, the online political file is meant to serve as a source of information to candidates, buyers, viewers, and others, but the actual purchase of advertising time and the receipt of equal time requests will continue to be handled by the station.<sup>127</sup> We reiterate that we are merely changing the form of disclosure to the public of information already required to be in the public file. We are making no change in the political advertising sales process. Rather, we expect stations to continue handling political ad sales in whatever way is most convenient to them.

41. *Substantive Political File Requirements.* We likewise are not persuaded by arguments that the rules regarding what material must be included in the political file are vague and that, therefore, the Commission should not adopt an online posting requirement.<sup>128</sup> As discussed above, this proceeding simply modernizes the procedures television broadcasters use to inform the public about information they are already required to disclose. If any licensee is unsure about any aspect of our political file requirements, it may request clarification of our existing substantive disclosure rules. To respond to specific questions raised in this record, however, we offer the following guidance. The political file rule requires that licensees “keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted.”<sup>129</sup> One commenter argues that it is unclear what “requests” includes.<sup>130</sup> Although we do not think that term is unclear, we clarify that licensees are required to place in their political files any final orders by candidates for specific schedules of time or availabilities within a specific schedule of time – in other words, orders to buy particular schedules (including programs or dayparts), amounts of time (including spot or program lengths), and classes of time for particular days (such as preemptible spots, Monday-Friday rotations, runs of schedule or specific placements).<sup>131</sup> Licensees are not required to place in their political files general requests by candidates for advertising time stations have available to purchase, or rates for a general array of time.

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<sup>126</sup> See Letter from Jerald N. Fritz, Senior Vice President, Legal and Strategic Affairs for Allbritton Communications, to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 at 1 (filed Mar. 22, 2012) (explaining that Allbritton’s concerns regarding changes to the political advertising sales process were based upon a belief that the Commission was proposing compliance in a “centralized, searchable database [which] could impose significant burdens on broadcasters since it would necessarily require major modifications to all trafficking systems for all television broadcasters . . . unavoidably affect[ing] the way all commercial time would be sold,” but noting that “to the extent that the Commission is not contemplating such a national, government-directed, searchable database, our concerns would be appreciably reduced.”).

<sup>127</sup> *FNPRM* at ¶ 23.

<sup>128</sup> National Religious Broadcasters at 13-14; Joint TV Broadcasters at 5; Named State Broadcasters at 10.

<sup>129</sup> 47 C.F.R. § 73.1943. The same information, among other things, must be included with respect to issue advertising containing a message relating to a “political matter of national importance.” 47 U.S.C. § 315(e). These issue ads will also need to be included in the online political file, just as they currently need to be included in the local political file.

<sup>130</sup> National Religious Broadcasters Comments at 13-14.

<sup>131</sup> We note that “any final orders” mean orders that station representatives reasonably believe to be a final, agreed-upon order. If the final order is later amended after being included in the on-line political file, a station can replace the previously final order with the amended final order, or may simply upload the amended final order.

42. In response to concerns that the term “disposition” is unclear,<sup>132</sup> we note our rules define it as “the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.”<sup>133</sup> We clarify that the “disposition” of the request does not include a record of the negotiations or back-and-forth discussions between the licensee and the candidate after the request is made. It does include the final, mutually agreed upon order of time, including: classes of time purchased; charges made; as well as any subsequent, relevant reconciliation information about the order, including the times spots actually aired and details such as any “make goods” provided for preempted time, and rebates or credits issued.<sup>134</sup>

43. *Existing Political File.* Commenters argue that if we require stations to upload the existing political file, it will be unduly burdensome.<sup>135</sup> Some broadcasters provide projected costs and burdens of placing the political file online. NAB estimates that just uploading the existing political files could take hundreds of hours per station.<sup>136</sup> NAB bases its projections on the largest political file it reported.<sup>137</sup> While we believe that this burden projection is overstated, we recognize that the existing political file may contain the greatest number of pages for broadcasters to upload as they transition to an online public file. Our review of the public files in the Baltimore DMA indicates that the commercial stations’ political files were made up, on average, of 1568 pages, and accounted for, on average, 30% of the stations’ public files.<sup>138</sup> One station’s political file was made up of 4079 pages, or almost 70% of its public file.<sup>139</sup>

44. Departing from the proposal in the *FNPRM*, we do not require stations to post the contents of their existing political files to the Commission’s online public file. Given the two-year retention period for the political file, broadcasters’ investment in uploading existing political files would

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<sup>132</sup> *Id.*

<sup>133</sup> 47 C.F.R. § 73.1943. Broadcasters often refer to this as the “dates and dollars” requirement. See Network Station Owners Comments at 9-10; Letter from Susan Fox, Vice President, Government Relations for The Walt Disney Company, to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 at 1 (filed Mar. 2, 2012); Letter from Maureen O’Connell, Senior Vice President, Government Relations for News Corp., to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 at 2 (filed Feb. 8, 2012).

<sup>134</sup> See *In the Matter of Codification of the Commission’s Political Programming Policies*, 7 FCC Rcd 678 (1991), *recon. denied*, 7 FCC Rcd 4611 (1992). “Make goods” are advertising spot announcements rescheduled as a result of technical difficulty or preemption. *Id.* at ¶ 57 n. 93.

<sup>135</sup> Named State Broadcasters Assn. at 6.

<sup>136</sup> NAB Comments at 19, Attachment A. NAB supported its assertions about the burdens of uploading the existing political file by providing the estimated size of the political file in inches for six stations in six different television markets, ranging in size from 3,150 pages to 8,100 pages. *Id.* For example, NAB noted that a political file in Burlington, Vermont measured 19.5 inches, which they estimated as equaling 4,388 pages. NAB Comments, Attachment A. Free Press argues that such estimates are exaggerated. Letter from Corie Wright, Senior Policy Counsel for Free Press, to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 at 1 (filed Feb. 29, 2012). Free Press states that it visited all of the television stations in Burlington, Vermont, and was unable to find any political file that was as large as the files discussed by NAB. *Id.* Further, their review found that each political file reviewed contained documents beyond the required two year retention period, illustrating the possibility that “broadcasters may be mistakenly (and vastly) inflating the size of the political files they actually are required to maintain.” *Id.* at 2.

<sup>137</sup> NAB Comments at 19, Attachment A.

<sup>138</sup> This excludes letters and emails from the public, which will be retained in the local file.

<sup>139</sup> *Id.*

have a limited return for the public. Likewise, exempting the existing political file will only require broadcasters to continue to maintain a robust local file for a relatively short period. Because of the two-year retention period for the public file and the relatively large size of existing files, we conclude that exempting the *existing* political file from online posting is a reasonable means of reducing the initial burden of moving public files online.

45. *Small Market and Non-Affiliate Exemption.* Finally, we adopt in part a broadcaster request that we delay online posting of the political file for smaller stations.<sup>140</sup> These commenters argue that we should allow all broadcasters to gain experience working with the online public file system before requiring that they maintain their political file online.<sup>141</sup> As noted above, this proceeding is over a decade old, and we believe it is time to bring the accessibility of the entire public file into the 21<sup>st</sup> century in as expeditious a manner as is possible.

46. We are persuaded, however, that it is appropriate to allow certain stations additional time to begin uploading the political file. As discussed further below, because the contents of the political file are time-sensitive, stations must place records in the political file “immediately absent unusual circumstances.”<sup>142</sup> We believe it is appropriate to require stations with a greater market reach to undertake this time-sensitive transition first, as they will be more likely to have dedicated resources to address any implementation issues that arise, if necessary.<sup>143</sup> Therefore, we will temporarily exempt stations that are not affiliated with the top four national television broadcast networks (ABC, CBS, NBC and Fox) in the top 50 DMAs and all stations that serve markets below the top 50 DMAs, regardless of affiliation, from including their political file in their online public file for two years.<sup>144</sup> This exemption will ease implementation for broadcasters during the initial transition to the online public file, while also giving the Commission time to ensure that the online public file system is implemented effectively.

47. We believe that exempting stations that are not affiliated with the top four networks (ABC, CBS, NBC and Fox) in the top 50 DMAs, and those stations in markets below the top 50 DMAs, creates an exemption threshold that is clear, easy to establish and implement, and not often subject to significant change. Other options for identifying the class of stations to exempt do not provide the certainty that this clear definition provides. For example, an exemption for the top four ranked stations in each market would create a threshold that is often subject to change, would be difficult to measure and administer, and would provide uncertainty to broadcasters, as they are not as able to predict or control ratings. The Commission has used a DMA and affiliation-based standard in other contexts, and we believe it is appropriate to use in this instance.<sup>145</sup>

48. Moreover, while this exemption will ease the initial implementation for broadcasters, it

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<sup>140</sup> As discussed above, stations need not place online those documents already contained in their political files before the effective date of our rules.

<sup>141</sup> Joint Television Parties Reply at 14; Named State Broadcasters Assn. Comments at 7, 10.

<sup>142</sup> See ¶ 55-58, *infra*. See also 47 C.F.R. § 73.1943(c).

<sup>143</sup> Named State Broadcasters Assn. Comments at 7, (“Undoubtedly, these costs would fall even more heavily on smaller television stations.”)

<sup>144</sup> We note that this exemption is permissive, not mandatory. If any station that falls within this exemption prefers instead to immediately transition to the online political file, it is permitted to do so.

<sup>145</sup> See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd. 11847, ¶ 11 (2011); *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, ¶ 76 (1997).



will nonetheless provide the public with online access to the political files of stations garnering the vast majority of political advertising time and money. Stations affiliated with the top four broadcast networks often provide the highest-rated programming, and therefore the most-watched advertising, including a large proportion of political advertising. Based on numbers provided by Kantar Media, we find that these 11 percent of stations, which reach 65 percent of Americans,<sup>146</sup> account for roughly 60 percent of the total television political advertising dollars spent in each major election cycle.<sup>147</sup> Affiliated stations are also more likely to have dedicated IT resources to resolve issues that may arise with implementation of the online political file in the expeditious manner that will be necessary for the political file. Stations that will be exempt initially from the rule generally have smaller political files than the affiliates in the top 50 DMAs, and therefore the public will not be deprived of online access to substantial amounts of political file information during the limited exemption period.<sup>148</sup> In addition, we believe that the approximately two years of experience that stations will gain by transitioning the rest of the online public file will help to ensure that they are prepared to upload the political file. We also believe that delayed implementation for stations with a smaller market reach will ensure that the Commission is able to target assistance to these stations, if necessary. Commission staff will gain experience with the process of assisting the smaller first wave of broadcasters transitioning to the online political file. This will enable staff to more efficiently assist the larger number of stations that will transition later, who may need enhanced support because of their more limited IT resources.

49. As part of our efforts to evaluate the effect of this transition, the Media Bureau will issue a Public Notice by July 1, 2013 seeking comment on the impact of these rules. This Public Notice will give commenters – including the initial group of stations to use the online political file, stations that have yet to transition, and members of the public that review the online political file – an opportunity to provide the Commission with information regarding the impact and utility of the online political file. The Public Notice will enable the Commission to consider whether any changes should be made before the requirement takes effect for the other stations.

50. As discussed above, we do not believe online posting of the public file, including prospective posting of the political file, will impose an unreasonable burden on any television broadcaster. Nevertheless, if licensees not covered by the two-year exemption believe filing new political file materials online will impose an undue hardship, they may seek a waiver of this requirement.<sup>149</sup> Stations seeking waivers should provide the Commission with information documenting the economic hardship the station would incur in complying with this requirement, its technical inability to do so or such other reasons as would warrant waiver under our general waiver standards.

<sup>146</sup> Media Bureau staff analysis of Nielsen data shows that the Top 50 DMAs represent 65.4% of the total TV households for the 2011-2012 TV season. Further, staff analysis also shows that the average combined audience share of stations affiliated with the four major broadcast networks (ABC, CBS, FOX, and NBC) in each of the top 50 DMAs (*i.e.* the non-exempt stations) is 82% during prime time programming.

<sup>147</sup> Kantar Media – a media research company that specializes in politics, advocacy, and public affairs advertising expenditure data – indicates that “to date in the 2012 federal election cycle, 59 percent of all spot advertising dollars have been spent on affiliates of the four largest national networks in top 50 markets.” Letter from Kenneth M Goldstein, President, Kantar Media Campaign Media Analysis Group, to William Lake, Chief of the Media Bureau, FCC, MM Docket No. 00-168 at 1 (Apr. 5, 2012). These percentages are consistent with the analysis of the 2008 and 2010 election cycles, where affiliates of the four largest national networks in top 50 markets received 64% and 62% of federal political advertising dollars spent on broadcast television, respectively. *Id.*

<sup>148</sup> In our review of the political files of the Baltimore DMA, the political files of the stations that will be exempt averaged 247 pages, which is substantially smaller than the political files for the stations affiliated with the top four networks, which averaged 2104 pages.

<sup>149</sup> See 47 C.F.R. § 1.3.

51. *Authority.* No commenter challenged the Commission's authority to require online posting of the public file generally, but NAB suggests that the Commission lacks authority to require the placement of station political files online, and that we therefore must carve out the political file from the rest of the public file. In supplemental comments, NAB argues that in the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Congress expressly required that the IRS and FEC make certain election-related records available online, but did not do so for the items required to be placed in broadcasters' political files.<sup>150</sup> They assert that "the clear implication is that Congress did not intend for broadcasters to be subject to an obligation to place their political files online and thus, the FCC lacks authority to impose such a requirement absent further legislative action."<sup>151</sup> NAB further argues that "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."<sup>152</sup>

52. We find NAB's argument unpersuasive. NAB overlooks relevant facts relating to the adoption of BCRA. First, in adopting the political file retention requirements of Section 315(e) of the Communications Act as part of BCRA, Congress explicitly required that "a licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time"<sup>153</sup> and that "[t]he information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years."<sup>154</sup> In doing this, Congress essentially codified the existing political file regulations as reflected in Section 73.1943 of our rules at the time,<sup>155</sup> and placed no new restriction on the Commission's discretion to implement the public-access policy. That is particularly significant because, at the time of BCRA's passage, the Commission had tentatively concluded in this very proceeding that stations should place their public inspection files – including their political files – online.<sup>156</sup> Congress was presumably aware that moving the political file online was actively being considered by the Commission, and expressed no intent to prevent such updating of the rules. Congress instead placed no restriction in BCRA on how the Commission may direct stations to make the political file "available for public inspection." Because the statute is silent on the question of how stations should make the political file "available for public inspection," the Commission, as the expert agency required to implement the Communications Act's provisions, has discretion in determining how to do so, provided that the Commission's decision "is based on a permissible construction of the statute."<sup>157</sup> Given this context, we do not believe that "available for public inspection" equates to "available only in paper format and not online," as NAB asserts. We instead believe that this requirement of availability for public inspection allows us to require that such records be made available for public inspection online, particularly given the ubiquity and general expectation of electronic access to records today.

<sup>150</sup> NAB Supplemental Comments at 1, *citing* the Bipartisan Campaign Reform Act of 2002, P.L. 107-155, 116 Stat. 81 (2002). *See also* Ex Parte Presentation of Target Enterprises at 13-15 (filed April 19, 2012).

<sup>151</sup> *Id.* at 1-2.

<sup>152</sup> *Id.* at 3-4; *citing* *Gozlon-Peretz v. U.S.*, 498 U.S. 395, 404 (1991).

<sup>153</sup> *See* 47 U.S.C. § 315(e)(1).

<sup>154</sup> *See* 47 U.S.C. § 315(e)(3).

<sup>155</sup> *See* 47 U.S.C. § 315(e); 47 C.F.R. § 73.1943

<sup>156</sup> *See* *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, 15 FCC Rcd 19816, ¶ 31 (2000) ("NPRM").

<sup>157</sup> *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).